

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

RUBIO R.,

Petitioner,

v.

SAN ANDREAS REGIONAL CENTER,

Respondent.

OAH Case No. 2011060794  
California Early Intervention Services Act  
(Gov. Code, § 95000 et seq.)

**DECISION**

Administrative Law Judge Dianna L. Albini, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on July 1, 2011.

Petitioner Rubio R. was represented by his mother Bernadette D.

Monica Bhatnagar, Director's Designee for Fair Hearings, represented respondent San Andreas Regional Center. Arushie Nugapitya, San Andreas Regional Center District Manager was also present.

The record was closed and matter was submitted for decision on July 1, 2011.

**ISSUES**

The parties agreed that the following issue shall be determined:

Should San Andreas Regional Center continue funding speech therapy services for Petitioner beyond his third birthday?

## FACTUAL FINDINGS

1. Petitioner turned three years old on June 25, 2011. He first qualified for San Andreas Regional Center services under Early Start in December of 2010, due to global delays in the areas of cognition, communication, motor skills and physical development. He resides with his mother at his grandmother's home.

2. Petitioner's initial Individualized Family Services Plan was received on December 9, 2010, when he was 29 months old. The initial services provided to him included oral-motor/speech and language services (speech therapy). Speech therapy is a medically necessary service for petitioner which is beneficial and meets the special developmental needs related to his disability. San Andreas Regional Center agreed to fund one hour of speech therapy per week commencing in February of 2011, through, and including June 22, 2011.

3. San Andreas Regional Center attempted to accommodate petitioner's specific time constraints by contacting approximately 27 speech therapists. Due to exceptional circumstances in coordinating speech therapist's schedules to accommodate petitioner's family situation, he did not receive the speech therapy sessions San Andreas Regional Center agreed to fund prior to his third birthday.

## LEGAL CONCLUSIONS

1. The Department of Developmental Services and regional centers are responsible for providing early intervention services required for California's participation in Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. § 1421 et seq.) for all infants and toddlers eligible under Government Code section 95014, with the exception of those infants and toddlers whose impairments fall within the responsibility of the California Department of Education and the local educational agency. (Gov. Code, § 95014, subd. (b)(1).) For infants and toddlers who are eligible to receive services from both a regional center and a local educational agency, the regional center is the agency responsible for providing or purchasing appropriate early intervention services that are beyond the mandated responsibilities of local educational agencies and that are required for California's participation in Part C of the IDEA. (Gov. Code, § 95014, subd. (c).)

2. Early intervention services are defined by federal law. As set forth in 20 U.S.C. section 1432(4), early intervention services are developmental services provided under public supervision which are "designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team . . . "Early intervention services "include" the following services: family training, counseling, and home visits; special instruction; speech-language pathology and audiology services, and sign language and cued language services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services

necessary to enable the infant or toddler to benefit from the other early intervention services; social work services; vision services; assistive technology devices and assistive technology services; and transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described above. (20 U.S.C. § 1432(4)(E).) These services must be provided by "qualified personnel," which include: special educators; speech-language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; registered dietitians; family therapists; vision specialists, including ophthalmologists and optometrists; orientation and mobility specialists; and pediatricians and other physicians. (20 U.S.C. § 1432(4)(F).) The federal statutory definition of early intervention services is further reiterated in federal regulation (34 C.F.R. § 303.12(d)) and state regulation (Cal. Code Regs., tit. 17, § 52000, subd. (12)).

3. California Code of Regulations, title 17, section 52112, subdivision (f), authorizes regional centers to continue providing or purchasing services for a preschooler who has been determined eligible for regional center services: (1) until the beginning of the next school term after the toddler's third birthday during a period when the local education agency special education preschool program is not in session; and (2) when the multidisciplinary team determines that services are necessary until the local education agency special education program resumes.

Petitioner's speech therapy is a medically necessary service which is beneficial and meets the special developmental needs related to his disability. San Andreas Regional Center agreed to fund speech therapy sessions commencing in February and ending on June 22, 2011. Due to exceptional circumstances, petitioner did not receive those speech therapy sessions San Andreas Regional Center agreed to provide. Petitioner shall receive 12 speech therapy sessions on or before August 26, 2011, which is prior to the commencement of petitioner's next school term following his third birthday.

## STIPULATION

The parties agree to the following terms:

1. 12 sessions of speech therapy will be provided to petitioner at Kinder Care Center. Kinder Care Center is located at 860 North Hillview Drive, Milpitas, California, 95035. Kinder Care Center's telephone number is (408) 263-0444.

2. The speech therapy sessions will commence the week of July 11, 2011, or as soon thereafter as possible, and shall conclude on or before August 26, 2011, (prior to the commencement of petitioner's Fall 2011/2012 school term).

3. Speech therapy shall be funded at a maximum of two sessions per week, except as set forth in paragraph 4 below.

4. Speech therapy may occur three times per week in order to make-up a properly cancelled speech therapy session. A properly cancelled speech therapy session means that the speech therapist is notified by petitioner's family by phone/phone message and electronic mail at least 24 hours prior to the scheduled speech therapy session. In the event of an emergency resulting in the cancellation of a scheduled speech therapy session with less than 24 hours prior notice, the session can be rescheduled if the petitioner's family provides sufficient written documentation to San Andreas Regional Center.

5. This Decision can be provided to petitioner's speech therapy vendor, Speak Right Now.

6. Diana Lynn, Director of Speak Right Now, has agreed to the following:

(a). provide the name and contact information of petitioner's speech therapist;

(b) Speak Right Now will work with Kinder Care Center directly to schedule 12 speech therapy sessions between the week of July 11, 2011, and on or before August 26, 2011;

(c) As soon as possible, Speak Right Now will provide petitioner and San Andreas Regional Center with a written schedule identifying the dates and times of petitioner's 12 speech therapy sessions;

(d) At the end of July and August of 2011, Speak Right Now will provide petitioner's mother and San Andreas Regional Center with a letter sent via electronic mail, detailing the dates of speech therapy services provided to petitioner.

7. Petitioner will be available for speech therapy at Kinder Care Center as follows.

2011 DATES	DAYS	TIMES
July 11 to 29	Monday– Thursday	12:00 pm to 4:00 pm
July 11 to 29	Friday	8:00 am to 12:00 pm
August 1 to 26	Monday - Friday	9:00 am to 3:00 pm

8. The parental attendance requirement for petitioner's 12 speech therapy sessions is waived. If petitioner's mother wants to meet the speech therapist, she will attend the first speech therapy session.

## ORDER

The appeal of petitioner Rubio R. under the Early Intervention Services Act is granted. San Andreas Regional Services shall continue funding speech therapy for petitioner pursuant to the terms of the stipulation contained herein.

DATED: July 11, 2011

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DIANNA L. ALBINI  
Administrative Law Judge  
Office of Administrative Hearings